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CENTER FOR ENVIRONMENTAL HEALTH

FILED

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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF MARIN

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

15 Plaintiff,)

16 v.)

17 ADAMS USA, INC.; ALLESON OF)
ROCHESTER, INC.; ATHLETIC)
18 SPECIALTIES, INC.; CHAMPION SPORTS)
PRODUCTS CO.; DICK'S SPORTING)
19 GOODS, INC.; PRO SPORTS, INC.;)
RAWLINGS SPORTING GOODS COMPANY,)
20 INC.; THE SPORTS AUTHORITY, INC.;)
WAL-MART STORES, INC.; and DOES 1)
21 through 200, inclusive,)

22 Defendants.)
23)
24)
25)
26)
27)
28)

Case No. 011104003

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' baseball or other sports belts used in
10 athletic uniforms (the "Products"). Consumers, including children, are exposed to Lead when
11 they use, touch or handle the Products.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
15 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
16 introduce Products contaminated with significant quantities of Lead into the California
17 marketplace, exposing consumers of their Products, many of whom are children, to Lead.

18 3. Despite the fact that Defendants expose children and other consumers to
19 Lead, Defendants provide no warnings whatsoever about the carcinogenic or reproductive
20 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
21 of Proposition 65. Health & Safety Code § 25249.6.

22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code
27 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

1 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
2 cases have resulted in significant public benefit, including the reformulation of thousands of
3 products to remove toxic chemicals and to make them safer. CEH also provides information to
4 Californians about the health risks associated with exposure to hazardous substances, where
5 manufacturers and other responsible parties fail to do so.

6 5. Defendant ADAMS USA, INC. is a person in the course of doing business
7 within the meaning of Health & Safety Code § 25249.11. Adams USA, Inc. manufactures,
8 distributes and/or sells the Products for sale and use in California.

9 6. Defendant ALLESON OF ROCHESTER, INC. is a person in the course of
10 doing business within the meaning of Health & Safety Code § 25249.11. Alleson of Rochester,
11 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

12 7. Defendant ATHLETIC SPECIALTIES, INC. is a person in the course of
13 doing business within the meaning of Health & Safety Code § 25249.11. Athletic Specialties,
14 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

15 8. Defendant CHAMPION SPORTS PRODUCTS CO. is a person in the
16 course of doing business within the meaning of Health & Safety Code § 25249.11. Champion
17 Sports Products Co. manufactures, distributes and/or sells the Products for sale and use in
18 California.

19 9. Defendant DICK'S SPORTING GOODS, INC. is a person in the course of
20 doing business within the meaning of Health & Safety Code § 25249.11. Dick's Sporting Goods,
21 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

22 10. Defendant PRO SPORTS, INC. is a person in the course of doing business
23 within the meaning of Health & Safety Code § 25249.11. Pro Sports, Inc. manufactures,
24 distributes and/or sells the Products for sale and use in California.

25 11. Defendant RAWLINGS SPORTING GOODS COMPANY, INC. is a
26 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
27 Rawlings Sporting Goods Company, Inc. manufactures, distributes and/or sells the Products for
28 sale and use in California.

1 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
2 defects, or other reproductive harm.” Proposition 65, § 1(b).

3 21. To effectuate this goal, Proposition 65 prohibits exposing people to
4 chemicals listed by the State of California as known to cause cancer, birth defects or other
5 reproductive harm above certain levels without a “clear and reasonable warning” unless the
6 business responsible for the exposure can prove that it fits within a statutory exemption. Health
7 & Safety Code § 25249.6 states, in pertinent part:

8 No person in the course of doing business shall knowingly and
9 intentionally expose any individual to a chemical known to the
10 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual. . .

11 22. On February 27, 1987, the State of California officially listed lead as a
12 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
13 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
14 the developing fetus, “female reproductive toxicity,” which means harm to the female
15 reproductive system, and “male reproductive toxicity,” which means harm to the male
16 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,
17 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
18 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
19 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

20 23. On October 1, 1992, the State of California officially listed lead and lead
21 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
22 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
23 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
24 § 27001(c); Health & Safety Code § 25249.10(b).

25 24. Young children are especially susceptible to the toxic effects of Lead.
26 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from
27 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
28 absorb and retain more Lead in proportion to their weight than do adults. Young children also

1 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
2 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
3 small doses received in childhood, over time, can cause adverse health impacts, including but not
4 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
5 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
6 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

7 25. There is no safe level of exposure to Lead and even minute amounts of
8 Lead exposure have been proven harmful to children and adults. Studies have repeatedly
9 concluded that concentrations of Lead in children's blood previously deemed acceptable can
10 have adverse health effects. *See, e.g., Canfield, R.L., et al., "Intellectual Impairment in Children
11 with Blood Lead Concentrations below 10 ug per Deciliter," New England Journal of Medicine
12 348:16, 2003.* Another study on the effect of childhood Lead exposure declared that even the
13 smallest detectable amount of blood Lead levels in children can mean the difference between an
14 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
15 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

16 26. Lead exposures for pregnant women are also of particular concern in light
17 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.
18 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
19 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,
20 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental
21 Health Perspectives* 114:5, 2006.

22 27. Defendants' Products contain sufficient quantities of Lead such that
23 consumers, including children, who use, touch or handle the Products are exposed to Lead
24 through the average use of the Products. The routes of exposure for the violations are direct
25 ingestion when consumers (including children) place the Products in their mouths; ingestion via
26 hand-to-mouth contact after consumers touch or handle the Products; and dermal absorption
27 directly through the skin when consumers take on or off, touch or handle the Products. These
28 exposures occur in homes, workplaces and everywhere else throughout California where these

1 Products are used, touch or handled.

2 28. No clear and reasonable warning is provided with the Products regarding
3 the carcinogenic or reproductive hazards of Lead.

4 29. Any person acting in the public interest has standing to enforce violations
5 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
6 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
7 action within such time. Health & Safety Code § 25249.7(d).

8 30. More than sixty days prior to naming each Defendant in this lawsuit, CEH
9 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
10 the District Attorneys of every county in California, the City Attorneys of every California city
11 with a population greater than 750,000 and to each of the named Defendants. In compliance with
12 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
13 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
14 time period during which violations occurred; (4) specific descriptions of the violations,
15 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
16 Products sold and used in violation of Proposition 65; and (5) the name of the specific
17 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

18 31. CEH also sent a Certificate of Merit for each Notice to the California
19 Attorney General, the District Attorneys of every county in California, the City Attorneys of
20 every California city with a population greater than 750,000 and to each of the named
21 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each
22 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
23 relevant and appropriate experience or expertise who reviewed facts, studies or other data
24 regarding the exposures to Lead alleged in each Notice; and (2) based on the information
25 obtained through such consultations, believes that there is a reasonable and meritorious case for a
26 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
27 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney
28 General included factual information – provided on a confidential basis – sufficient to establish

1 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
2 and the facts, studies or other data reviewed by such persons.

3 32. None of the public prosecutors with the authority to prosecute violations
4 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
5 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
6 of CEH's Notices.

7 33. Defendants both know and intend that individuals, including children, will
8 use, touch or handle the Products, thus exposing them to Lead.

9 34. Under Proposition 65, an exposure is "knowing" where the party
10 responsible for such exposure has:

11 knowledge of the fact that a[n] . . . exposure to a chemical listed
12 pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No
13 knowledge that the . . . exposure is unlawful is required.

14 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
16 § 12201).

17 35. Defendants have been informed of the Lead in their Products by the 60-
18 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

19 36. Defendants also have constructive knowledge that their Products contain
20 Lead due to the widespread media coverage concerning the problem of Lead in consumer
21 products in general and in children's products in particular. The use of Lead in children's
22 products made from vinyl has been further publicized with the passage of the federal Consumer
23 Product Safety Improvement Act ("CPSIA") in 2008. Although the CPSIA sets strict Lead
24 content limits for all children's products, Defendants continue to manufacture, distribute, and/or
25 sell the Products with substantial quantities of Lead, quantities that far exceed the limits imposed
26 by the CPSIA.

27 37. As companies that manufacture, import, distribute and/or sell the Products
28 for use in the California marketplace, Defendants know or should know that the Products contain

1 Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to
2 consumers who use the Products are a natural and foreseeable consequence of Defendants'
3 placing the Products into the stream of commerce.

4 38. Nevertheless, Defendants continue to expose consumers, including
5 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
6 reproductive hazards of Lead.

7 39. CEH has engaged in good-faith efforts to resolve the claims alleged herein
8 prior to filing this Complaint.

9 40. Any person "violating or threatening to violate" Proposition 65 may be
10 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
11 violate" is defined to mean "to create a condition in which there is a substantial probability that a
12 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
13 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

14 **FIRST CAUSE OF ACTION**

15 **(Violations of the Health & Safety Code § 25249.6)**

16 41. CEH realleges and incorporates by reference as if specifically set forth
17 herein Paragraphs 1 through 40, inclusive.

18 42. By placing the Products into the stream of commerce, each Defendant is a
19 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

20 43. Lead is a chemical listed by the State of California as known to cause
21 cancer, birth defects and other reproductive harm.

22 44. Defendants know that average use of the Products will expose users of the
23 Products to Lead. Defendants intend that the Products be used in a manner that results in
24 exposures to Lead from the Products.

25 45. Defendants have failed, and continue to fail, to provide clear and
26 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
27 the Products.

28 46. By committing the acts alleged above, Defendants have at all times

1 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
2 individuals to Lead without first giving clear and reasonable warnings to such individuals
3 regarding the carcinogenicity and reproductive toxicity of Lead.

4 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

5 **PRAYER FOR RELIEF**

6 Wherefore, CEH prays for judgment against Defendants as follows:

7 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
8 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
9 of Proposition 65 according to proof;

10 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
11 preliminarily and permanently enjoin Defendants from offering the Products for sale in
12 California without providing prior clear and reasonable warnings, as CEH shall specify in further
13 application to the Court;

14 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
15 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
16 Products sold by Defendants, as CEH shall specify in further application to the Court;

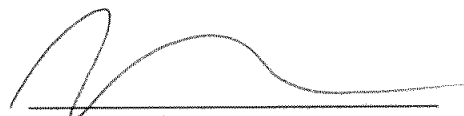
17 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
18 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

19 5. That the Court grant such other and further relief as may be just and
20 proper.

21
22 Dated: August 10, 2011

Respectfully submitted,

23 LEXINGTON LAW GROUP

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26 Howard Hirsch
27 Attorneys for Plaintiff
28 CENTER FOR ENVIRONMENTAL HEALTH